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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., et al.,

Appellants,

vs.

GERALD K. O'BRIEN, Wayne County Prosecuting Attorney and STEPHEN J. ROTH, Attorney General of the State of Michigan,

Appellees.

BRIEF

on behalf of EMPLOYERS ASSOCIATION OF MILWAUKEE, Amicus Curiae

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It is the position of the Employers Association of Milwaukee, amicus curiae, that on this appeal the judgment of the Supreme Court of Michigan, 325 Mich. 250, should be sustained.

Appellants attack the statute of Michigan in question known as the Bonine-Tripp Act (Michigan Statute Annotated, 1947, Cum. Supp. § 17.454(1) et seq.), the substance of which statute is summarized at pp. 2-4 of appellants' brief. This statute, in effect, provides a penalty for the calling of a strike unless and until a majority of employees in the unit have so voted in an election conducted by the Michigan State Mediation Board.

STATEMENT

The statute in this case is an exercise of the police power of the State of Michigan for the purpose of regulating the method of the calling of a strike. The statute has, of course, no extra territorial effect.

The general purposes of it are evidently (1) to provide for state mediation; (2) to provide for an election with reference to the calling of a strike; and (3) (because of 1 and 2) to enhance the probability of industrial peace and to give all employees within the unit affected by the threatened strike an opportunity under state supervision to vote by secret ballot upon the question of the strike.

Section 22 of the statute provides for violations of it as criminal offenses. It will be noted that there is nothing in the Act which prohibits a strike or requires an individual employee to render labor or service without his consent.

Certainly there is nothing in the Michigan Act which in any manner infringes upon the provisions of Section 502 of the Labor-Management Relations Act of 1947.

QUESTIONS PRESENTED

Appellants present three questions in their brief (p. 4):

1. Whether the Michigan statute providing for a majority vote before authorizing a strike invades the field occupied by the Labor-Management Relations Act of 1947;

2. Whether these provisions conflict with the provisions of the Labor-Management Relations Act of 1947; and

3. Whether these and other provisions of the Michigan statute constitute unlawful restraints in violation of the due process clause of the Fourteenth Amendment.

ARGUMENT

1. The Statute is a Proper Police Power Law.

The State of Michigan and many other states prior to a period roughly from 1935 to 1947 have been confronted with many strikes in many important and large industries and others involving thousands of employees with resultant economic loss to the people of the states. Attendant upon these strikes, the widespread fashion was lawlessness which at times, as is a matter of common knowledge, affected deeply and intensively the welfare of the states and their people at large.

There can be no question but that in the exercise of its police power, the State of Michigan constitutionally could legislate in this regard to protect the public interest involved.

The Labor-Management Relations Act of 1947, and its predecessor, the Wagner Act, employed the majority principle in the matter of collective bargaining, and the Michigan statute employs the same majority principle in the matter of the strike vote.

This principle and its application to statutes governing strike action is fully covered in the opinion of the Supreme Court of Wisconsin in *Hotel & Restaurant Employees, Local 122*, 236 Wis. 329, at p. 345, sequitur, quotations from which opinion are found in the opinion of the supreme Court of Michigan in this case, and, as stated in the opinion of the Supreme Court of Michigan, this court in 315 U.S. 437 quoted the provision of the Wis-

consin statutes which makes it "an unfair labor practice" to "cooperate in engaging in promoting, or inducing picketing, boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of employes of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike * * *."

It may be added that this involves an exercise of the right of the state for the purpose, at least, of laying some emphasis on the interest of the state in the *right of its people to work*. Much has been said and written over a long period of years, and particularly in the last 15 to 20 years, of the fundamental right to strike for lawful purposes.

No one has any quarrel with this, but it is sometimes difficult to understand why the correlative *right to work* has not had at least some degree of similar emphasis. This statute, at least gives the employees a *correlative right to determine whether they want to work or strike*. Surely this is a proper and laudable legislative purpose.

It will be noted that the Wisconsin law makes it an unfair labor practice to engage in the concomitants of a strike without a vote in favor of the strike by a majority in a secret ballot, and that the Wisconsin law does not provide for the supervision of the holding of the election by the Wisconsin Employment Relations Board, the agency in Wisconsin created to enforce the Wisconsin Employment Peace Act. (Wis. Stats. Sec. 111.01 to sec. 111.65, particularly Sec. 111.06 (2) (e).)

2. The Michigan Statute Does Not Invade a Field Which Congress Has Occupied.

Much of the appellants' brief, particularly pp. 20-24, deals with the history of the Labor-Management Rela-

tions Act of 1947. On this point, emphasis is laid by the appellants on the progress of the Labor-Management Relations Act of 1947 as it went through congress, deriving from the facts thereof, as is set forth at pp. 20-24 of appellants' brief, that congress expressly rejected the strike vote provision which Michigan has enacted.

It is submitted that the mere fact that congress rejected a provision for a strike vote does not delimit the power of the states to provide for such a vote.

There is nothing in the legislative history of the Act which, in our judgment, indicates that this was the intention of congress. It, on the other hand, certainly appears that congress left the matter open to the states in which a labor dispute or strike occurs.

One can search the legislative history of the Labor-Management Relations Act of 1947 and one will find therein no intimation that there was any thought of a prohibition upon the states to enact strike vote legislation.

In fact, due to industrial conditions, situations vary so much in the different states that it is our opinion that it is probable that congress had in mind that if there was to be any regulation of this sort it should fit the particular situation of a particular state. After all, the states have to deal in the exercise of their regulatory police power with the concomitants of a strike and the question as to whether or not the majority of the employees affected desire to strike.

One thing is certain—there is nothing in the language of the Act to indicate that congress has preempted this field.

Nothing can be found in the text of the Act which bars the states from a legitimate regulation to protect its people generally, and those to be involved in a strike, if the employees themselves did not care to follow the mandates of either labor leaders or the minority of the employees. It is expressly significant that the Labor-Management Relations Act of 1947 contains Section 13 to the effect that nothing in the Labor-Management Relations Act of 1947 shall affect the limitations or qualifications of that right (the right to strike).

3. The Michigan Statute Does Not Conflict With the National Act.

We are heartily in accord with the statement in appellants' brief, at p. 27, that the purpose of the Labor-Management Relations Act of 1947, like that of its predecessor, the Wagner Act, is the encouragement of collective bargaining.

It is difficult for us to follow appellants' argument that the State of Michigan interferes with collective bargaining. It would seem that the argument is devoted to the fact that the Michigan statute sets up a different unit for the vote than may be set out in a collective bargaining contract. Michigan is interested, and rightly so, in what occurs within its borders, and in the case of a union and an employer, such as in this case, that have a master contract governing employment relations in several states, the Michigan law cannot operate beyond state lines. As far as the state is concerned, it includes all of the unit which is provided for in the collective bargaining contract which is within the State of Michigan, and the result of the strike vote affects only those within the unit who are in the State of Michigan. This is a strike vote unit, not a collective bargaining unit.

It cannot be said, we think, that because a collective bargaining unit in a collective bargaining contract is wider than the confines of the state with respect to the people in such a bargaining unit, that the state thereby interferes with or adopts a different unit on the sole question of whether or not the State of Michigan may set up machinery to determine whether the people within that state who are to be affected thereby desire to go upon a strike.

4. The Michigan Statute Does Not Conflict With the Right to Strike Guaranteed by the National Act.

Appellants claim that the delays imposed by the Michigan statute conflict with the National Act, referring to Section 8 (d) providing for the 60-day notice of termination and 30-day notice to the Federal Mediation and Conciliation Service, and also to any State or territorial agency established to mediate and conciliate disputes where the dispute occurred.

We fail to find, however, in the National Act any specific legalization of a strike as such after the 60 days have expired, and in any event there was nothing to prevent the strike vote under the Michigan statute from being held within the 60 days. Furthermore, that portion of Section 8 (d) of the National Act requiring a 30-day notice to the mediation agency of the state is entirely consistent with the avowed purpose of congress to leave a field for activity to the state.

There is nothing in the Michigan statute which prohibits a strike or interferes with the right to strike. It merely provides in substance that any person who either individually or as one of a group of persons instigates a

strike or who shall call or cause a strike to be placed into effect, etc., without having first complied with the provisions of the Act, shall be guilty of a criminal offense. (Sec. 22, Mich. Stats.)

There is no deprivation of the right to strike as contended by appellants in their brief (p. 36). This question is not involved. The only thing involved here is the right of the state to regulate in the exercise of its protective police power and provide for an authorized strike.

5. The Michigan Statute Does Not Violate the Due Process Clause of the Fourteenth Amendment.

The third general point made in the appellants' brief is that the Michigan Statute violates the due process clause of the Fourteenth Amendment.

It seems to us that this contention is ably and completely dealt with in the opinion of the Supreme Court of Michigan, in which it quotes excerpts from *Hotel & Restaurant International Alliance Local 122 v. W. E. R. B.*, 315 U.S. 437. (See opinion, Supreme Court of Michigan, T. p. 127)

There is always a balance to be maintained between the exercise of the constitutional right of freedom of speech and the intrusion into that as affecting the correlative constitutional rights of others and of the legitimate exercise by the state of a police power intertwined in essence with a legitimate conception by the state of what should be done for the protection of the liberty of its people as a whole. *Carpenters Union v. Ritters Cafe*, 315 U.S. 722. *Giboney v. Empire Storage and Ice Co.*, 336 U.S. 490.

It is the same with the so-called constitutional right to strike, as this court pointed out in *International Union*,

UAW, AFL Local 232 v. W. E. R. B., 336 U.S. 245, in which the court commented upon the right to regulate strikes, and particularly said:

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act. Labor Board v. Jones & Laughlin, 301 U.S. 1 33."

This court goes on to say, in the opinion, in effect, that this recognition of the right to strike plainly contemplates a lawful strike, but that it did not legalize strikes, such as the sit-down strike, which state law made illegal, or a strike that ran afoul of federal law, or one in violation of a contract made pursuant thereto, or one creating a national emergency. In all of these cited instances, the fundamental right to strike, which involves the right of freedom of speech to the extent of publicizing the facts of the strike and to use peaceful persuasion to obtain its objectives, must yield to a superior right of the state or the nation in its legitimate characterization of unlawful strikes.

SUMMARY

We have here a statute designed to protect and further, as the legislature has recognized, the best interests of the people of the State of Michigan.

Judicial, as well as legislative, notice must be taken of the conditions, as we indicated at the outset of this brief, that existed in the State of Michigan and other

states, which prompted the adoption of what we may call this public welfare law. Strikes and industrial strife affecting thousands and thousands of people were, and are, rife. Everybody knew, and knows this, and everybody understands its effect upon the welfare of the people of the state.

The legislature felt that this welfare could best be protected and the interests of the employees involved in industrial disputes could best be furthered by providing for a strike vote before a strike should occur.

This law in no manner denies the union or the employees any constitutional rights, and congress, by its legislation, has not preempted the field of regulation of strikes. In fact, there is complete abnegation by congress of this purpose. Therefore, the statute, being a reasonable exercise of police power, must stand, and the judgment of the Supreme Court of Michigan should be affirmed.

We may add that a considerable number of states, such as Colorado, Delaware, Florida, Kansas, Minnesota, North Dakota, and Utah have laws providing for strike votes. They vary in some particulars, but their purposes are, we think, alike.

The State of Wisconsin has, as is hereinbefore set forth, provided for a secret ballot of those employees in the unit. It has, as has been pointed out, made the concomitants of a strike, such as picketing and boycotting, an unfair labor practice unless a majority has voted favorable to the strike, and the strike vote election is not conducted or supervised by the Wisconsin Employment Relations Board.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of Michigan should be affirmed.

Respectfully submitted,

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Amicus Curiae.

APPENDIX

Sec. 13 of Labor Management Relations Act:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

Sec. 111.06(2)(e) of Wisconsin Employment Peace Act:

> "To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike."

Sec. 502 of Labor Management Relations Act:

> "Nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act."